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10/037,287	12/20/2001	Denise R. Couture	17,703	6818

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,287

Applicant(s)

COUTURE ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6-8. 6) ☐ Other: _____

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DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

The formal drawings filed 5-13-02 have been placed in the application but are not approved by the Examiner for the following reasons.

2. The drawings are objected to because in Figures 6A-7B, the descriptive text should be avoided, i.e. such text could be inserted in the Detailed Description section. Also, in Figures 1A-2A, where is 44, 56, 58 and 60 as described in the paragraph at page 7, line 27. In Figure 1D the lines from the lower 56 and 70 should extend to the structure they denote. In Figure 1D' the leftmost 70 should be 40. Also the lines from the uppermost 72, 56(both) and the rightmost 70 should be provided leading to the structure they denote. Where is 12, 14, 16, 28, 30, 32, 34, 38, 42, 46 and 62 in Figures 2A-2B as described on pages 11-18? Where are 43, 110, 112, 114 and 116 in Figures 3A-3E as described on page 20, lines 21 et seq? A proposed

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drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention of claims 1-48, e.g., the layers, the core, the first fastener component as claimed in claims 1 and 3, the cooperating fastener as claimed in claims 4-5, 8-9, the perforation lines, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

4. The abstract of the disclosure is objected to because the abstract is too long, i.e. more than 150 words in length. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: 1) On page 1, in the reference to prior applications, line 1, thereof, "priority...copen ding" should be --the benefit of --. 2) On page 2, line 17, the terminology "the inventors" should be avoided. 3) The description and the Figures are inconsistent. For example, page 8, line 22 and page 17, line 20 refer to Figures 1 and 2 but such Figures do not exist. This also applies to page 11, line 12. In

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the paragraph to page 9, line 25, lines 3-7 thereof, which of the Figures 1A-1E are being referred to? On page 11, line 18, "10" should be --10'--. 4) In the paragraph at page 10, line 25, line 6 thereof, "orienting" should be --orientation of --.

Appropriate correction is required.

Claim Objections

6. Claims 5, 14, 19, 25-28, 30-38 and 43-46 are objected to because of the following informalities: In claim 5, lines 4-5, i.e. "and...direction" are redundant, see claim 1, last section. This also applies to claim 14. In claims 19 and 25, "each"(first) should be deleted. In claim 26, there should be a period at the end of the sentence. In claim 30, line 2 and claim 32, line 1, the line is incomplete, i.e. missing words? In claim 30, line 4, "first a" should be --a first--. In claim 43, lines 8 and 17, "the first" should be --each first--. In claim 45, line 1, "the" should be --each--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claims 1-9, 21-29, 32-34, 36-38 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In regard to claim 1, is Applicant just claiming the subcombination of the fastening system as set forth in the preamble or the combination of the fastener system and the article as set forth on lines 2 and 7? See also claim 6. The rejection of claims 1-9 also applies to claims 21-29 with respect to the fastening system and sanitary napkin. Note especially claims 21 and 25. In claim 26, is the fastener component referred to that claimed in claim 21 or another cooperating fastener component? If the former, such is inconsistent with lines 7-8 of claim 21? If the latter, such should be clarified, i.e. "the" should be --another--? In regard to claims 32 and 36, if the first and second components are those referred to in claim 30, how would such components located on the same wing provide the function as set forth in lines 2-3 and 10-12 of claim 30? Also such claims appear to be inconsistent with claim 30, lines 4 and 9. Claim 40 appears to be inconsistent with claim 39, lines 7 and 11, i.e. a napkin having a first fastener which comprises a portion of each of the wings and a cooperating component which comprises a portion of each of the wings could be claimed.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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use (b) the invention was patented or described in a printed publication in this or a foreign country or in public or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-3, 6-12, 15-20 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Provost PCT '201.

Claims 1-3, 6, 10-12, and 15: See Figures 3-3a, 4, and 5 of Provost, i.e. the first portion is 12, the first fastener component is 18, the engagement members are 14, the second portion is 10, the cooperating fastener component is 22, the attachment direction is S as seen in Figure 5, the engagement members are direction dependent along an axis perpendicular to S as seen in Figure 5, i.e. their engagement openings are perpendicular to S. With regard to lines 4-5 and last two lines of claim 1, corresponding language in claim 10, and claims 3 and 12, see, e.g., page 8, lines 18-26 and Figures of the instant specification. The Provost device includes the same structure and orientation thereof. Therefore, if not already taught by the Figures of Provost, there is sufficient factual basis for one to conclude that the functions, capabilities or properties of the claimed structure would also be inherent in the same structure of the Provost device. See MPEP 2112.01

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Claims 7-8 and 16-17: see page 1, lines 24-31. It is noted that the random-bonded material includes unbonded material in random pattern where unbonded.

Claims 18-19: see paragraph bridging pages 6-7 and the Figures cited above.

Claims 9 and 20: the Provost reference includes all the claimed structure. Claims 9 and 20 recite capabilities of such structure. Therefore there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Provost, i.e. see MPEP 2112.01.

Claim 48: see discussion of claims 1 and 10 supra as well as the last two sentences of the abstract and page 2, lines 17-21 of the instant application.

10. Claims 1, 4-5, 10, 13-14 and 21-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammons et al '484.

In regard to claims 1, 4-5, 10, 13-14, 21-28 and 30 -46, see Figures 1-12, i.e. the topsheet is 22, the backsheet is 26, the core is 24, the first and second, portions, flaps, flap portions or wings are 34, 36, see also paragraphs 84-87 of Hammons et al, the fastener components are 102, 104, see also paragraphs 88-99, 107-108 and 121-124. The cited sections also incorporate Scripps '724 at col. 12, lines 36-42, and thereby Noel et al '520 at, e.g., Figures, col. 6, lines 48-51, col. 8, lines 3-9 and col. 12, lines 15-35. Noel teaches that a loop fastener component can be a nonwoven pattern unbonded loop material with direction dependent or nonisotropic openings. Such openings are taught as all facing the same direction and that such direction can be parallel to, perpendicular to or at any direction or angle to the direction of attachment. The cited

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Hammons sections also incorporate Thomas, EP '087, which at col. 14, lines 8-20 teaches a hook fastener component has engagement members with direction dependent or nonisotropic openings which can all face in the same direction. In Figure 6 and at col. 34, lines 13-15 it is further taught that such openings all face in the same direction as the long axis of the fastener. The cited Hammons sections also incorporate Nestegard '060 which at col. 7, lines 24-27 teaches a hook fastener component having engagement members with direction dependent or nonisotropic openings which all face in the same direction which direction is parallel to the long axis of the fastener and at col. 9, lines 23-41 teaches a pattern unbonded nonwoven loop cooperating fastener component. Therefore, Hammons teaches fasteners 102 and 104 on each flap, wing or portion. The fasteners on each wing can either be both hook fasteners or both loop fasteners or one hook and one loop fastener. The fasteners 102, 104 can be parallel with each other, disposed orthogonally to each other or at any angle with regard to each other. Thus the fasteners are also so oriented with regard to the direction of attachment. The hooks on the first fastener can be direction dependent or nonisotropic with the engagement member openings all facing the same direction. Additionally the openings could be aligned with the long axis of the fastener. The loops on the cooperating Fastener can also be direction dependent or nonisotropic with the loop openings all facing in the same direction. The direction can be any direction with respect to the direction of attachment. Accordingly the Hammons et al device includes first fastener components having nonisotropic engagement members with the engagement openings perpendicular to the direction of attachment, see, for example, Figures 7 and 9, and a cooperating

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fastener component having nonisotropic loop members with the loop openings parallel or perpendicular to the attachment direction and engagement openings of the first fastener. With regard to lines 4-5 and last two lines of claim 1, the corresponding language of claims 10, 21, 30, 39 and 43 and claims 4-5, 13-14 and 22-24, see, e.g., page 8, lines 18-26 and Figures of the instant specification. The Hammons device includes the same structure and orientation thereof. Therefore, if not already taught by the Hammons, there is sufficient factual basis for one to conclude that the functions, capabilities or properties of the claimed structure is also inherent in the same structure of the Provost device. See MPEP 2112.01.

In regard to claim 29, see Figures 25-28 and paragraph 142.

In regard to claim 47, see also elements 160 and 161 and paragraphs 160-164.

Double Patenting

II. Due to the number of claims under consideration and the lack of clarity thereof, i.e. see rejections supra, for the purposes of the following rejections the invention of the claims of the instant application will be considered a sanitary napkin with a pair of wings having selectively releasable, interengaging fasteners and each of such wings including a first fastener component and a cooperating fastener component whereby the wings are fastenable to one another by fastening one first fastener component on one wing to a cooperating fastener component on the other wing, i.e. the other first fastener component and cooperating component are not engaged with each other, and each of the first fastener components includes a plurality of

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nonisotropic engagement members such that the component has an axis of maximum engagement which axis is generally orthogonal to the direction of attachment, see, e.g., claim 40. The invention of the "278 application('730 published application) will also be considered such a sanitary napkin but additionally present an unengaged first fastener component adjacent the backsheet so it is adapted to engage the fabric of an undergarment positioned between the backsheet and the wings, see, e.g., claim 11.

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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13. Claims 1- 48 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 10/037,278(published Application No. 2003/0040730). Although the conflicting claims are not identical, they are not patentably distinct from each other because since the effective filing dates of all the applications is the same, the one way In re Vogel test applies, i.e. are the claims of the instant application obvious in view of the other application. The answer is yes. As best understood, see discussion supra, the claims of the instant application are generic to or broader than the claims of the other applications, i.e. they don't require the presentation of the first unengaged first fastener component adjacent the backsheet. Once an applicant has received a patent for a species or more specific embodiment, he(she) is not entitled to a patent for the generic or broader invention. This is because the specific anticipates the broader. See In re Goodman, supra.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Ownership

14. Claims 1-48 are directed to an invention not patentably distinct from claims 1-28 of commonly assigned Application No. 10/037, 278(published Application No. 2003/0040730). Specifically, see the double patenting rejection in the preceding section.

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15. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned '278('730) discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78^o and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Bien reference incorporates the Mattingly fastener structure. Mattingly was cited by the Applicants. Even if the Hammons reference would be overcome but the claims would remain of the same scope, the combination of Bien, Mattingly, Osborn III et al "884 and Leak(also cited by Applicants) teach the invention as is now claimed. See Osborn III at Figures 44-46 and col. 45, line 67-col. 46, line 1. The Hammonds et al '740 and Couture '251 reference are cited as disclosing claimed features. The Roe et al reference teaches perforations. The Norman device teaches fasteners with nonisotropic engagement members and directional patterns thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

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K. M. Reichle
Karin M. Reichle
Primary Examiner
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KMR

August 6, 2003